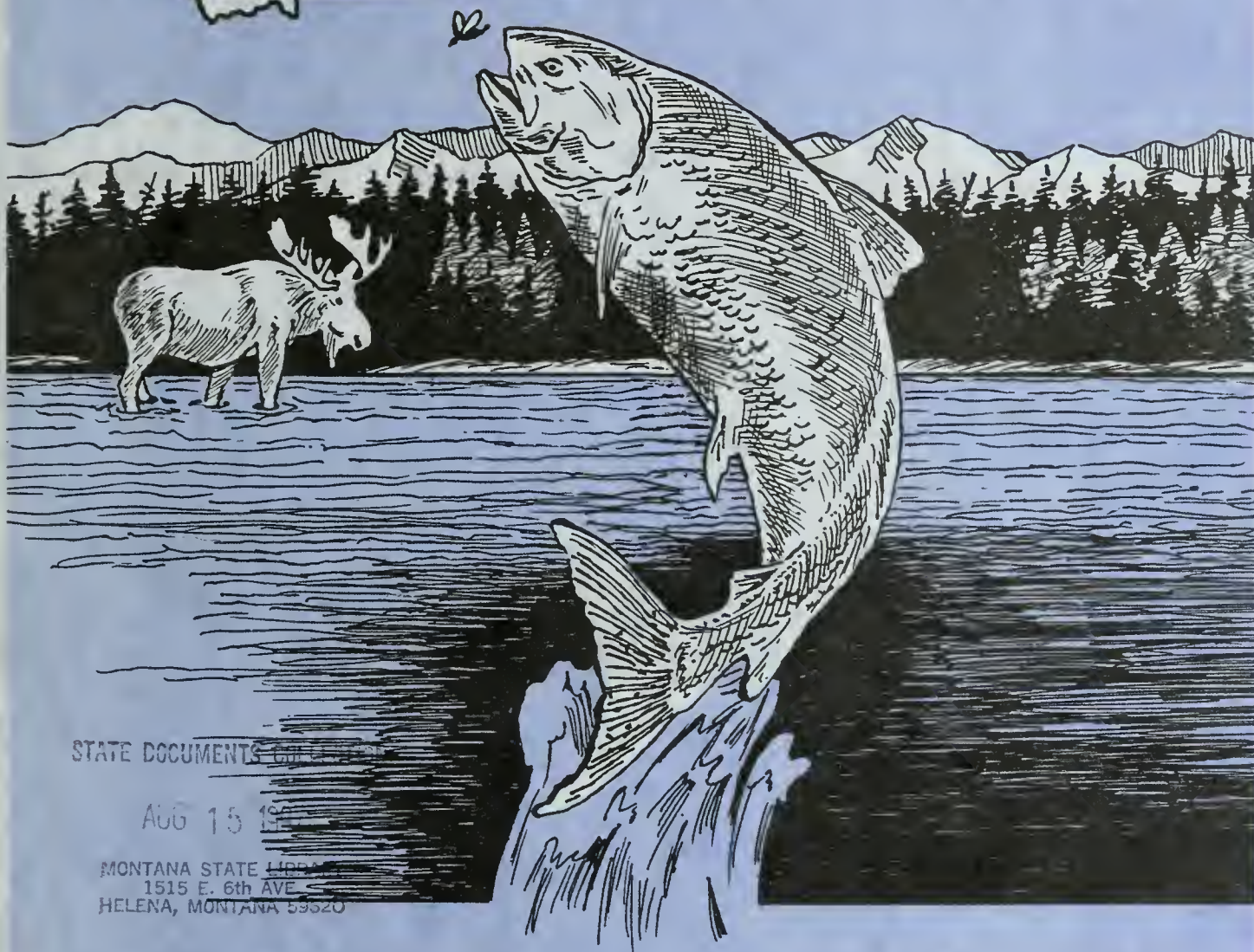


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Department of Administration
State of Montana
Risk Management and
Tort Defense Division



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FISCAL YEAR 1996 ANNUAL REPORT

**Risk Management & Tort Defense Division
Department of Administration
State of Montana**

For the Period July 1, 1995, through June 30, 1996

**Alternative accessible formats of this
document will be provided upon request.**

TABLE OF CONTENTS

PURPOSE	1
General	1
Mission of the Division	1
CLAIMS	2
Overview	2
Claims Summaries	2
Frequency/Severity Distribution	4
Loss Trends	4
LAWSUITS	6
FY96 Trials	6
Montana Supreme Court Decisions	8
United States District Court Decisions	10
PROMOTING RISK CONTROL	10
Loss Control Efforts	10
Loss Control Updates	11
Internal Assessments/Inspections	11
FINANCING RISK	12
Commercial Insurance	12
Coverages and Costs	13
Losses - Commercial Insurance	15
Self-Insurance Fund	15
Actuary Report	16
RISK MANAGEMENT MILESTONES	17

Members of the Risk Management and Tort Defense Division thank the many individuals, both internal and external, for the cooperation and consideration extended to us during FY96.

RISK MANAGEMENT AND TORT DEFENSE DIVISION
DEPARTMENT OF ADMINISTRATION
ANNUAL REPORT
FISCAL 1996

PURPOSE

The Risk Management and Tort Defense Division (RMTD) of the Department of Administration produces an annual report. This report covers the period from July 1, 1995 through June 30, 1996.

The purpose of this report, and those that will follow in subsequent years, is:

- To provide risk management, insurance, and claims/lawsuit information for the benefit of agency executives and legal counsel, legislators, and other interested parties.
- To summarize what the division has accomplished during the fiscal year.
- To outline what lies ahead.

General Information

The state risk management program is established by statute and supported by Executive Order from the Governor.

The risk management plan provides for the establishment of a state risk management advisory committee to address risk management issues and to make recommendations on methods to reduce exposure to liability, property, and workers' compensation losses. The plan also includes obtaining commercial insurance policies and providing self-insurance programs for the state.

In addition, the Tort Claims Act allows the department to accumulate and administer a fund which is statutorily appropriated as provided in §2-9-202, MCA, for the evaluation, adjustment, and payment of claims/lawsuits.

The objective of risk management is to minimize agency exposure to property, legal liability, and workers' compensation losses. Risk management involves identifying potential loss producing causes and then treating those risks through a combination of one or more of the following techniques.

- **Avoidance** - Avoiding risk where possible.
- **Loss Prevention** - Preventing losses from occurring through training and consultation.
- **Loss Reduction** - Reducing the severity of loss once it occurs through effective legal defense and claims administration.
- **Contractual Transfer** - Purchasing insurance or transferring risk to independent contractors via contract where feasible.
- **Segregation of Exposure** - Physical separation of property so as to minimize the possibility that a hazard will result in a total loss to all property in any one location.

Mission of the Division

The mission of the Risk Management and Tort Defense Division is to provide cost-effective and comprehensive risk management service and to protect and defend the State of Montana against property and casualty claims and losses. In order to accomplish this mission, the division will achieve the following:

- 1) Where feasible, provide cost-effective commercial or self-insurance protection to state agencies, boards, commissions, universities, and vocational education centers.

- 2) Provide cost-effective, quality legal assistance to state defendants through the use of either staff counsel, agency legal services counsel, or contract counsel to prevent and, if necessary, defend lawsuits.
- 3) Promote sound risk management principles and techniques through consultation with participants in the state risk management program.
- 4) Serve as a resource for state agencies in resolving risk management and tort liability defense issues for the protection of state assets and resources.
- 5) Seek timely and cost-effective resolution of all property and casualty claims filed against the state.

CLAIMS

Overview

By statute, the Risk Management & Tort Defense Division is responsible for the investigation, evaluation, and defense of tort claims and lawsuits filed against state agencies.

The division receives approximately 800 pro se claims a year which vary significantly by claim and agency. Pro se claims are actions not filed as lawsuits that could eventually become lawsuits or be settled prior to litigation.

Claims Summaries

Chart 1 shows a summary of those claims against the state that have been resolved during FY96. The total damages sought exclude amounts in excess of the state's statutory caps of \$750,000 per claim, \$1,500,000 per occurrence. It is important to note that of the \$6,299,417 in damages sought during the year, only \$534,864 was paid to claimants.

Some of the reasons for denial of claim are 1) there may be no negligence on the part of the state; 2) claimants may seek an amount greatly in excess of the value of their claim; or 3) another party may be found to be responsible for the damages.

The chart also summarizes graphically the percentage and dollar amounts paid to claimants expressed as a percentage of the total value sought. Note that less than 9% of the damages sought against the State of Montana during FY96 were paid to third parties.

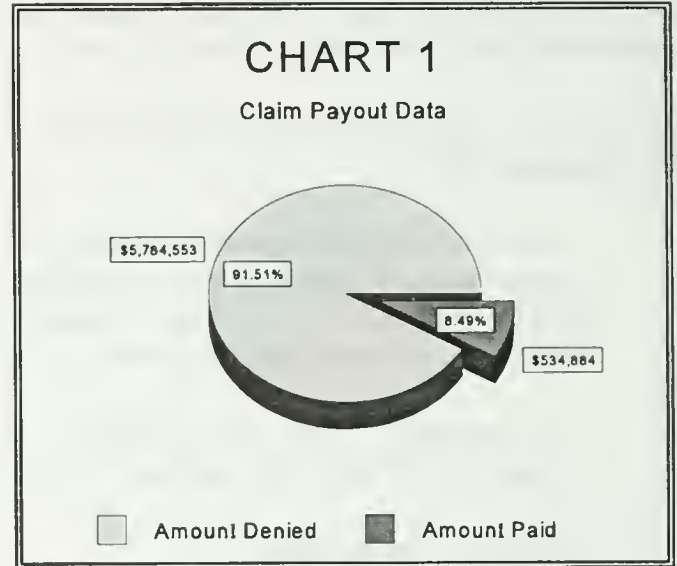
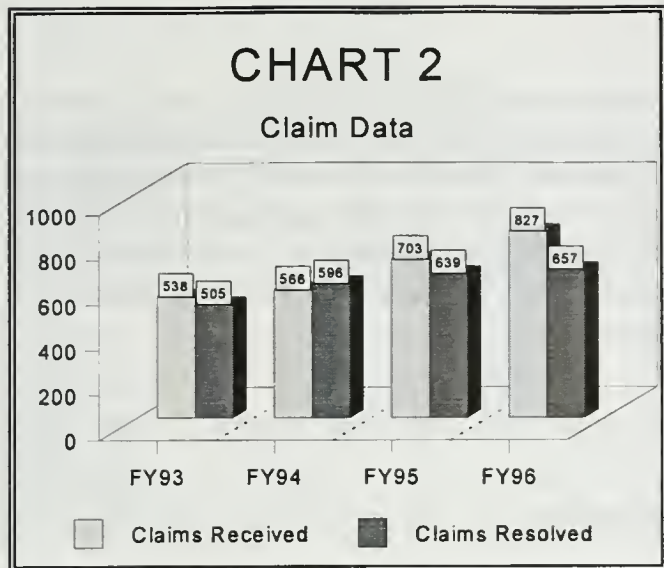


Chart 2 on page 3 offers a summary of claims experience for the last four fiscal years. The data for each fiscal year is summarized so that meaningful comparisons can be made. A trend analysis of this graph indicates that total claims received have increased significantly during this time. In FY94, the division received only 30 more claims than in FY93; while the difference between FY95 and FY96 is 124 claims. Overall, RMTD received 289 more claims during FY96 than during FY93.

Increases in the following categories of claims account for much of the overall increase in claims over FY95:

- (1) 56% of the increase came from auto related claims. The division received 70 more of these



claims in FY96 than in FY95. Of these, 34 were due to highway road hazards and 27 were for snowplow/sander claims.

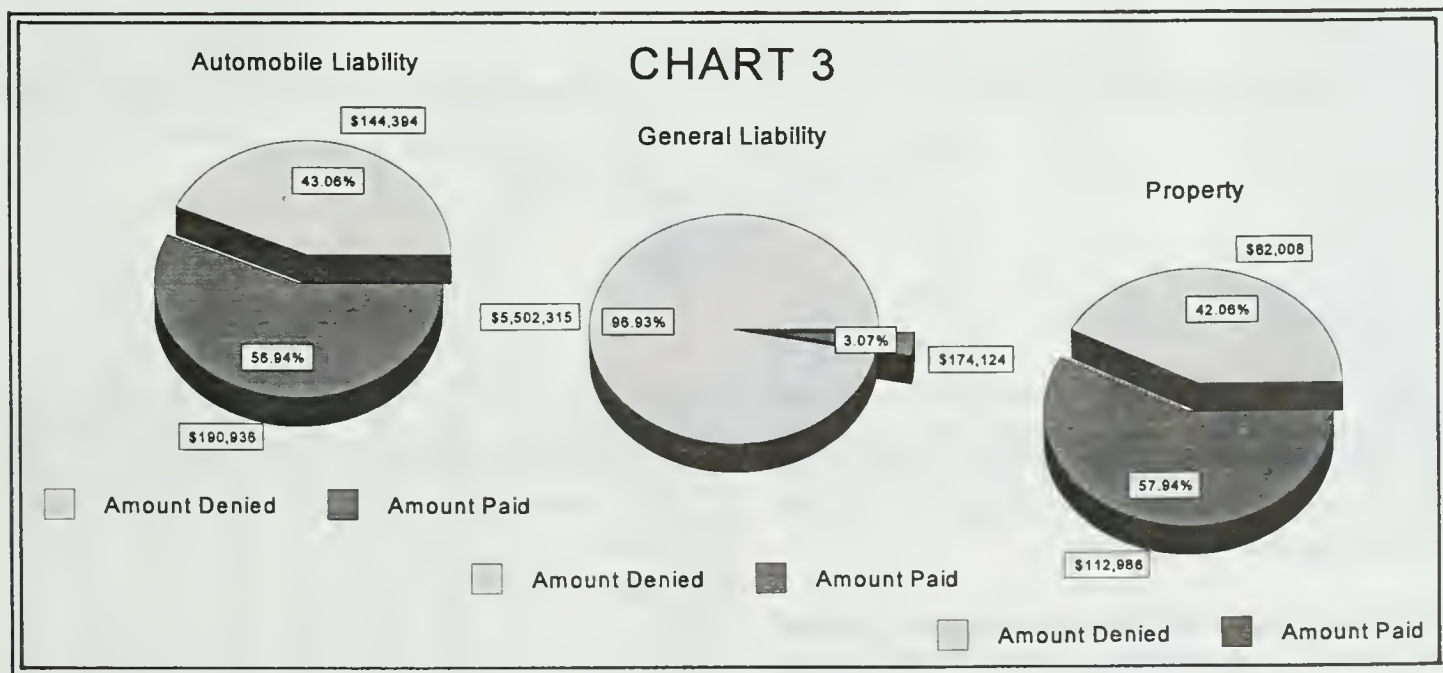
- (2) Liability claims accounted for 43% of the increase. The division received 43 more liability claims this fiscal year. 29 of these were the result of contractor liability and 13

were for liability claims other than the acts of foster children or bodily injury.

- (3) The remaining 9% of the increase is related to property claims. The division received 15 more property claims this fiscal year, mainly due to wind storms. Theft claims; however, dropped by 7, to total 20 for the year. This is the largest decrease in any type of claim during the reporting period.

All of the hail losses from FY91 and FY92 were completed and closed during FY96. The division did receive one large property claim related to spring flooding. This was for the Helena Department of Transportation flood damage to the roof of the building. The repair of the roof is estimated to cost \$100,821, which will be paid during FY97. A small portion of the cost to clean up was paid by the Federal Emergency Management Agency (FEMA) during this fiscal year.

Chart 3 summarizes graphically, by line of insurance, the damages paid and denied as a percentage of the total damages sought for claims resolved in FY96.



Frequency/Severity Distribution

Table 1 is a frequency and severity distribution of claims closed in FY96. This distribution identifies the number and types of losses paid within ranges, the total and average amounts paid, and those agencies with the most losses. This summary is very helpful and is a useful tool in identifying those agencies who have loss frequency versus severity problems and the types of losses that occur.

Claims typically high in frequency, such as property damage caused by state snowplows, are relatively low in dollar value. On the other hand, liability claims and lawsuits against the state such as bodily injury or negligent highway design are cost intensive and require the expenditure of funds to defend and resolve.

TABLE 1									
Loss Frequency and Severity Distribution FY96									
CLAIMS									
LOSS RANGE	LOSS COUNT	AVG LOSS	TOTAL LOSSES	MAX LOSS	MIN LOSS	LOSS FREQUENCY BY AGC		LOSS FREQUENCY BY TYPE	
						AGENCY *	LOSSES	TYPE	LOSSES
\$0-500	515	\$89	\$45,616	\$500	\$0	TR	399	ROAD HAZARD	148
\$501-1,000	42	\$721	\$30,290	\$983	\$505	TR	24	COLLISION	14
\$1,001-2,000	54	\$1,452	\$78,408	\$1,962	\$1,002	TR	25	SNOWPLOW, COLLISION	16 ea
OVER \$2,000	46	\$9,726	\$447,379	\$79,924	\$2,001	US	13	COLLISION	18
TOTALS	657	\$916	\$601,693						
LAWSUITS									
LOSS RANGE	LOSS COUNT	AVG LOSS	TOTAL LOSSES	MAX LOSS	MIN LOSS	LOSS FREQUENCY BY AGC		LOSS FREQUENCY BY TYPE	
						AGENCY *	LOSSES	TYPE	LOSSES
\$0-1,000	24	\$111	\$2,671	\$833	\$0	CR	17	CIVIL RIGHTS	16
\$1,001-2,000	2	\$1,244	\$2,487	\$1,438	\$1,049	CR	2	CIVIL RIGHTS	2
\$2,001-5,000	3	\$3,197	\$9,591	\$3,020	\$2,500	CR, PH, RE	1 ea	CIVIL RIGHTS	2
\$5,001-10,000	3	\$6,762	\$20,285	\$8,634	\$5,560	TR	2	NE/PD **	2
\$10,001-20,000	3	\$13,859	\$41,577	\$18,030	\$10,859	US	2	BODILY INJURY	2
\$20,001-50,000	4	\$33,043	\$132,172	\$44,256	\$21,498	US	2	NEGLIGENCE	2
\$50,001-100,000	2	\$61,332	\$122,663	\$69,447	\$53,215	TR	2	NEGLIGENCE	2
OVER \$100,000	7	\$356,627	\$2,496,387	\$1,304,532	\$143,012	PH	3	BI/NE ***	3
TOTALS	48	\$58,913	\$2,827,833						

* Refer to Appendix IV for description of agency abbreviations.

** Negligence and property damage combined.

*** Bodily injury and negligence combined.

Loss Trends

During FY96, the division completed a 6 year analysis of property and liability claims (FY90 through FY95). The purpose of this analysis was to identify historical loss trends by agency as a basis for formulating loss control plans.

Claims were evaluated based upon frequency (number of claims) by general claim category. Tables 2 and 3 (on page 5) provide a summary by claim type of the number of claims filed and paid.

TABLE 2								
NUMBER OF CLAIMS FILED								
Claim Loss Code	FY90	FY91	FY92	FY93	FY94	FY95	TOTAL	
01 Snowplow/Sander	75	123	110	108	122	126	664	
02 Mower/Compressor	24	15	23	20	23	25	130	
03 Highway Potholes	4	1	2	8	16	17	48	
04 Oil/Tar/Paint	30	17	12	12	19	13	103	
05 Highway Road Hazard	53	34	90	92	101	144	514	
06 Collision	62	70	75	75	69	91	442	
07 Water Damage	7	12	2	10	5	12	48	
08 Fire	3	3	6	2	4	2	20	
09 Vandalism	6	1	4	6	3	3	23	
10 Storm	3	10	18	8	6	5	50	
11 Misc. Property	29	30	32	23	18	30	162	
12 Theft	31	28	24	16	16	27	142	
13 Bodily Injury	24	28	26	55	47	51	231	
14 Foster Child	11	15	22	9	13	19	89	
15 Other Liability	28	21	19	43	25	40	176	
16 Contractual Liability	50	45	36	57	81	109	378	
TOTALS	440	453	501	544	568	714	3,220	

TABLE 3

NUMBER OF CLAIMS PAID

Claim Loss Code	FY90	FY91	FY92	FY93	FY94	FY95	TOTAL
01 Snowplow/Sander	66	115	105	91	109	97	583
02 Mower/Compressor	24	14	23	20	22	22	125
03 Highway Potholes	2	1	2	1	4	2	12
04 Oil/Tar/Paint	27	11	12	10	10	8	78
05 Highway Road Hazard	35	24	68	54	49	75	305
06 Collision	59	67	68	70	62	77	403
07 Water Damage	5	10	2	8	4	7	36
08 Fire	3	3	4	2	3	1	16
09 Vandalism	4	1	3	6	3	1	18
10 Storm	3	7	17	8	5	4	44
11 Misc. Property	25	23	24	16	11	18	117
12 Theft	23	25	15	14	12	13	102
13 Bodily Injury	16	23	18	41	8	6	112
14 Foster Child	10	15	14	7	9	14	69
15 Other Liability	15	14	12	24	6	3	74
16 Contractual Liability	0	0	1	0	6	19	26
TOTALS	317	353	388	372	323	367	2,120

This data is also summarized by agency and by fiscal year.

Snowplow/Sander/Mower/Compressor claims account for 33% of all claims paid. Road hazards (including potholes, oil, tar, and paint categories) account for 18.6% of all paid claims. Together, these categories represent nearly 52% of all paid claims (but only 10% of expenditures).

The next most frequent category is collisions (19%) with nearly every agency involved in at least one paid claim. Property claims (water damage, fire, vandalism, storm, and misc.) account for 15.7% of the total.

Table 4 below provides a summary of expenditures by major category of claim type. Visualizing the potential savings to be gained makes it easier to justify the allocation of resources to specific loss control efforts.

TABLE 4

TOTAL AMOUNT PAID BY CLAIM TYPE

Claim Loss Code	FY90	FY91	FY92	FY93	FY94	FY95	TOTAL
01 Snowplow/Sander	29,287	49,687	42,792	40,742	45,785	40,680	248,973
02 Mower/Compressor	8,634	3,630	4,313	7,514	5,199	6,657	35,947
03 Highway Potholes	89	149	714	247	426	1,041	2,666
04 Oil/Tar/Paint	11,275	1,596	2,489	4,391	2,421	868	23,040
05 Highway Road Hazard	13,882	11,597	24,282	11,068	22,330	27,674	110,833
06 Collision	52,891	109,181	89,888	115,976	114,115	156,010	638,061
07 Water Damage	4,395	37,960	40,118	13,334	30,767	24,770	151,344
08 Fire	193,598	67,103	115,233	27,022	25,520	133	428,609
09 Vandalism	3,883	209	191,132	3,555	9,456	17,203	225,438
10 Storm	9,527	46,115	565,798	582,223	26,593	24,863	1,255,119
11 Misc. Property	30,515	15,183	41,634	23,140	7,949	16,364	134,785
12 Theft	29,091	34,713	5,014	36,830	14,784	22,963	143,395
13 Bodily Injury	37,901	45,936	14,757	5,879	66,892	10,083	181,448
14 Foster Child	1,788	10,148	2,519	2,344	3,385	7,859	28,043
15 Other Liability	36,181	34,877	3,773	235,176	27,015	250,250	587,272
16 Contractual Liability	0	0	0	0	1,452	15,867	17,319
TOTALS	462,937	468,084	1,144,456	1,109,441	404,089	623,285	4,212,292

LAWSUITS

The Risk Management and Tort Defense Division is responsible for the defense of lawsuits filed against the state involving tort liability. Counsel defending the state include lawyers in the division, agency counsel, the Agency Legal Services Bureau of the Department of Justice and outside counsel. Appendix I reflects the distribution of cases among these four groups of attorneys for 1996. Nearly 80% of the division's cases were defended by state employee attorneys.

There are approximately 230 lawsuits which RMTD is currently defending. This number represents a slight increase over the last reporting period and remains approximately the number of suits that had been the pattern during the late 80's. This number does represent a significant increase over the average number of approximately 120 lawsuits which was the pattern in the early 90's. Much of this increase results, directly or indirectly, from the prison disturbance of September 22, 1991. Of the 230 suits the division is defending now, more than 100 are filed by Montana State Prison inmates. The relatively stable number of suits other than those filed by inmates may be attributed to the policy of early identification and resolution of claims with merit and the vigorous defense of the lawsuits.

Despite the increase in the number of suits defended, the fund balance has increased over the last three years. Beginning in 1987 the state self insurance fund balance began declining. It declined from \$10,191,119 in FY87 to \$4,093,359 in FY93. In the last three years, the balance has increased by nearly \$3.2 million to \$7,260,483. The increase is directly attributable to lower settlements and court judgments, lower costs in defending claims and lawsuits, and increases in the agency proprietary rates. From FY87 through FY91, liability payouts averaged \$3.6 million a year. From FY92 through FY96, the same payouts averaged \$1.9 million per year.

In the last five years the number of lawsuits the division defends has nearly doubled. With respect to

legal counsel fees, as early as 1988, the division was spending \$1.3 million for outside legal counsel (the amounts spent for outside counsel include money paid to Agency Legal Services). For FY93, FY94, and FY95 the amounts were \$924,926, \$1,064,802 and \$1,551,200. In FY96 the total for outside legal counsel fees (including Agency Legal Services) was \$1,074,520.

In the face of an increasing number of cases and inflation, the cost for outside counsel has remained relatively stable (it decreased nearly \$500,000 for FY96) over the last several years. The number of cases defended by state employee attorneys continues to increase and was nearly 80% in FY96.

Appendix II is a listing of lawsuits closed during FY96. It shows the agency involved in the case, the claimant, amount sought, amount paid, loss adjustment expenses, and verdict. During FY96, 48 cases were closed. Of these closed cases, plaintiffs attorneys had sought \$12,873,903. Total settlements and payments for cases closed during FY96 amounted to \$1,900,065. Loss adjustment expenses to defend these cases were \$922,553.

FY96 Trials

Since July 1, 1995, three cases defended by RMTD have gone to trial. The results of those cases are summarized as follows:

<u>Case</u>	<u>Trial Date</u>	<u>Amt Sought</u>	<u>Jury Award</u>
Starkenbourg v. DOC	08/07/95	\$2,100,000	\$860,000
Weinstein v. UM	11/20/95	\$ 750,000+	\$170,000
Hawley v. MDT	03/25/96	\$ 800,000	\$ 0

Starkenbourg v. Department of Corrections

On August 18, 1995, a Lewis and Clark County jury awarded \$860,000 in damages for injuries to April McCarty and for the death of Kim Starkenbourg. Charles Corliss shot both women on October 15, 1990, while on parole from Montana State Prison. The jury voted 12-0 that the state was negligent in its supervision of Corliss and 8-4 that the negligence caused the injuries.

Corliss was convicted in 1966 for the murder of Donald Hammer in Lincoln, Montana. He was released on furlough in 1983 and granted parole in 1985. During parole Corliss worked as a logger and on construction, traveling often to various job locations. In the summer of 1990 he moved with his family (with permission of his parole officer) to Washington state.

Corliss had been in a relationship with a woman (other than his wife) for two years before the move to Washington, and she moved with him. Corliss had problems with both his girlfriend and his wife that summer. The girlfriend had sought a protective order from state court in which she alleged Corliss slapped her and threatened to kill her. She later retracted these allegations in a letter to Corliss's parole officer, which plaintiffs argued was forced by Corliss.

In late July of 1990, Corliss sought a restraining order alleging his wife threatened him with a gun after finding out about his relationship with the girlfriend. Corliss moved out of the home he shared with his wife. He did not obtain an order but later moved back in with his wife. Corliss had called his parole officer to tell him of the incident with his wife. He remained in contact with his parole officer and worked to keep his relationship with his wife, explaining that he did not want to hurt his family. On October 15, 1990, he shot three women when he went to confront his girlfriend. Kim Starkenburg died. April McCarty and Brenda Mahoni were wounded but recovered. April McCarty and the family of Kim Starkenburg sued the state alleging negligent parole supervision.

Plaintiffs alleged that if Corliss had been better supervised his parole would have been revoked, or something else could have been done to prevent this tragedy. The plaintiffs focused on Corliss's access to a gun (the one he said his wife threatened him with in their house) and his behavior in the three months before the shooting. The plaintiffs said it was foreseeable that Corliss was going to injure someone.

The state argued that it does not have a duty to protect all people from the intentional criminal acts of others. Unless it is foreseeable that an identifiable person will be injured, it is not possible to predict or prevent all

injury. The District Court, however, instructed the jury that when it is reasonably foreseeable that a parolee is likely to cause harm, the parole officer has a duty to use reasonable care to control the parolee and to prevent him from doing harm.

The jury awarded \$400,000 to April McCarty, \$250,000 to Kim Starkenburg's family (for their personal loss) and \$210,000 to her estate for survivorship.

The state appealed the judgment arguing primarily that the jury instruction regarding the state's duty was too broad, imposing an unrealistic burden on the state to predict and prevent the criminal acts of others. The case is pending before the Montana Supreme Court.

Weinstein v. University of Montana

Martin Weinstein was terminated as Director of the Mansfield Center on June 30, 1993, just over one year from the date he was hired. He sued alleging breach of contract, violation of the covenant of good faith and fair dealing, and wrongful discharge. On November 27, 1995, after a seven day trial, a Missoula jury voted 9-3 in favor of the plaintiff, awarding him \$170,000. The case was settled after the verdict, without appeal, for \$150,000 plus \$1,186.11 in court costs. The University of Montana contributed \$37,500 to the settlement.

In April of 1992, after a national search, Martin Weinstein was hired as Director of the Mansfield Center. Before Weinstein was hired, he gave information to the search committee about one of his competitors (Deni Elliot) for the job of director. Weinstein felt she was not qualified. Weinstein was hired as director and Elliot as Professor of Ethics in Public Affairs. Before Weinstein was hired, he was told Elliot would also be hired.

The relationship between Weinstein and Elliot was contentious from the beginning. Elliot made allegations of gender discrimination, which led to an investigation. George Dennison, University President and Robert Kindrick, Provost, worked to resolve the problems but could not, and Weinstein was terminated.

Weinstein argued that he was treated unfairly because he did not have a say in hiring Elliot and did not receive support from the president to supervise Elliot. Weinstein also argued that his contract provided for a five year term, at least one year notice of termination and guaranteed tenure after one year.

The state argued that Weinstein served at the pleasure of the president and good cause for termination was not required. However, the state argued that Weinstein did not follow direction from his supervisors in numerous areas, was insubordinate and was terminated for good cause.

Hawley v. Montana Department of Transportation

Alice Fleury, Edward Chandler and Mary Chandler died and Cora Hawley was seriously injured in a head-on collision on State Highway 66 shortly before 4:00 p.m. on February 27, 1993. Cora Hawley and her grandmother Alice Fleury were northbound when Hawley's car crossed the centerline and collided head-on with a southbound car driven by Edward Chandler in which his wife Mary was a passenger.

Cora Hawley, her father Ronald Hawley and the estates of Alice Fleury, Edward Chandler and Mary Chandler sued the Montana Department of Transportation (MDT) alleging negligence for failure to plow and sand the road when the road was hazardous because of blown and drifted snow. Plaintiffs alleged Cora lost control of her car when snow and slush on the road pulled her car into the southbound lane.

The accident happened on Saturday, February 27. MDT records showed that the Harlem section last inspected the road on Thursday, February 25 and made no road condition report on Saturday until after the accident. The section supervisor was at his house in Harlem and weather conditions there led him to think the roads in his section would need no work that day. Plaintiffs argued this conduct was negligent.

Plaintiffs called several witnesses who testified that the road was in a dangerous condition as early as 10:00 or 11:00 a.m. that Saturday. They also put on evidence that the location of the accident was known

for drifting, that efforts to contact the section crew that day were unsuccessful and that the drifts were more than a foot deep. Plaintiffs argued that the Department needed a more effective system of road conditions monitoring and communication to ensure prompt response to dangerous conditions.

The state argued that the snow drifted to cover the road quickly and under unusual, isolated conditions. This was not a place known for drifting. It had not snowed for several days and snow was not drifting and sticking to other areas of the roads in this section. In the past, tribal authorities had notified the section supervisor when conditions requiring attention existed.

A BIA law enforcement officer testified that at 12:00 p.m. on the day of the accident, no snow was sticking to the road and there was no hazard. It was not until 3:42 p.m. that this officer requested the dispatcher to notify MDT that the road should be plowed. The dispatcher notified MDT after the accident and the road was plowed promptly.

The state also argued that Cora Hawley caused the accident by driving too fast and hitting her brakes in the snow, which caused her to lose control of her car. Cora's father had driven the road earlier in the day and told her that there was snow on the road. Cora testified that she saw the snow on the road. She knew better than anyone the condition of the road.

After a four and one-half day trial and two hours of deliberation, the jury found by a 9-3 vote the state was not negligent. Plaintiffs filed a notice of appeal but later dismissed the appeal.

Montana Supreme Court Decisions

ISC Distributors, Inc. v. Information Services Division, Department of Administration

On August 28, 1995, the Supreme Court ruled by a 4-3 vote that an unsuccessful bidder on a Request for Proposal issued under the Montana Procurement Act may bring an action for negligence and bad faith. The vast majority of decisions across this country do not allow unsuccessful bidders on public contracts to sue

the governmental entity for damages because the taxpayers are forced to pay twice for the same goods or services. The Court rejected the state's petition for rehearing and the case is proceeding in District Court.

Torres v. Montana State University

In another 4-3 decision (this one for the state) the Court ruled that the plaintiff, who was a student and employee (teaching and research assistant), could not bring a tort claim after settling her workers' compensation claim for injuries she claimed she received as the result of exposure to toxic substances in Gaines Hall at MSU. Plaintiff alleged she was exposed to toxic substances as a student and employee. The Court ruled that workers' compensation coverage provided the exclusive remedy.

Wiley v. Montana Department of Transportation

The Court held that a steel pullbox cover in a sidewalk in Glendive was not a defect or dangerous condition as a matter of law. Plaintiff slipped and fell on the cover on a rainy day, breaking her ankle in several places and requiring three surgeries. She sued the Department of Transportation alleging the cover was too slippery, too close to pedestrian traffic, and caused her fall. The District Court granted the state's motion for summary judgment and the Supreme Court affirmed, ruling that the cover met all standards and guidelines.

Bridgewater v. Montana State Hospital

Monte Bridgewater sued for constructive discharge and defamation. The Montana State Hospital was granted summary judgment on the discharge claim because Bridgewater was part of a collective bargaining unit and his remedies were through the collective bargaining agreement. The District Court also found that all but one of the alleged defamatory remarks were privileged as part of the discharge of an official duty. The Supreme Court affirmed. The case is remanded to District Court based on a single comment of a former social worker at the Hospital.

Wadsworth v. Department of Revenue

On February 26, 1996, upholding an \$85,000 wrongful discharge jury verdict, the Montana Supreme Court ruled that the opportunity to pursue employment is a fundamental right under the Montana Constitution and requires a compelling state interest for government intrusion.

Shannon Wadsworth was terminated from the Department of Revenue in 1991 for refusing to comply with a policy which prohibited Department appraisers from moonlighting as appraisers. The policy was based on the risk or appearance of impropriety. The Court ruled that the appearance of impropriety does not meet the compelling state interest standard, and the policy unconstitutionally infringed on the right to pursue employment.

Ejelstad v. Montana Department of Transportation

The Supreme Court sent this case back to District Court for a third trial by ruling that the District Court was wrong to deny a change of venue based on a stipulation between the parties. The state won the first two trials.

This case involves an accident which happened when Ellen Ejelstad drove her Ford Fiesta off Interstate 94 and into the end of a guardrail. Ellen died in the collision and her daughter was seriously injured. Plaintiff alleges the guard rail end was negligently designed, installed and maintained by MDT.

This case has been tried twice. The first jury found the state was not negligent by a vote of 8-4 in a March 1993 trial. After the first trial the Supreme Court upheld the grant of a new trial by the District Court based on the argument that certain documents not provided in discovery would probably produce a different result on retrial. The documents were used by plaintiffs when the case was tried again in June of 1995. The second jury voted 11-1 that the state was not negligent.

United States District Court Decisions

On July 8, 1996 United States District Judge Paul Hatfield ruled that the Blackfeet Tribal Court lacked jurisdiction over the State of Montana in a tort case that began in Tribal Court in 1987 arising from a single vehicle accident which occurred in 1986. Christine Gilham died in the accident which occurred on the Blackfeet Indian Reservation. Her mother, Toni Gilham is the plaintiff in this case. The state first exhausted its remedies through tribal court, which included a trial and appeals to the Blackfeet Tribal Court of Appeals and the Blackfeet Supreme Court.

After exhausting tribal court remedies, the state challenged tribal court jurisdiction seeking declaratory judgment in federal district court. The Court affirmed the principle that the Eleventh Amendment provides that each state is a sovereign entity in the federal system and that it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. The Court went on to rule that sovereign immunity precluded tribal court jurisdiction. The Court concluded by holding that Article II, Section 18 of Montana's Constitution is not a waiver of sovereign immunity and consent to suit in tribal court. The plaintiff has appealed the decision to the 9th Circuit Court of Appeals.

For now, and if the ruling is affirmed by the 9th Circuit (and possibly the U.S. Supreme Court), the state should not be subject to tribal court jurisdiction in tort cases.

PROMOTING RISK CONTROL

During FY96, RMTD and the State Compensation Insurance Fund assisted many state agencies in establishing effective risk management and safety programs.

These programs are required by law and are intended to reduce the incidence of occupational injury and other property and liability claims. A survey of 26 state agencies conducted by the division in January of 1996 revealed that most state agencies had already established safety committees.

Also, many agencies have already provided new employee orientations, developed safety policies and procedures, and conducted hazard inspections.

As a result of recent changes in benefits enacted by the 1995 legislature, more aggressive claims practices, and effective safety programs workers' compensation premiums have declined.

Loss Control Efforts

During FY96, the division provided over 300 consultations on such issues as theft loss prevention, employee safety, university student recreational liability, vehicle usage, insurance coverage, wrongful discharge, and contractual liability.

In addition, numerous loss control programs were developed and training provided:

- The division co-sponsored 'Safety and the Supervisor' training. The training emphasis was supervisory accountability, hazard identification, safety program performance evaluation, and safety training.
- The division contracted with Valuation Resources Management Inc. (VRM) to appraise state properties in Missoula with an estimated replacement value in excess of \$500,000. The purpose of these property valuations was to more accurately ascertain insurance costs and to assure that important state buildings and contents are adequately covered in the event of a loss.
- RMTD staff provided defensive driving training to an estimated 900 state employees across the state including the Departments of Transportation, Environmental Quality, Natural Resources, and Military Affairs. The training featured defensive driving techniques and prevention in three areas that most commonly contribute to vehicle collisions; vehicle condition, driver error, and weather. Feedback from state agencies and employees has been very positive.

- RMTD and the State Compensation Insurance Fund provided back injury prevention training to an estimated 500 state employees. It is estimated that a third of all workers' compensation claims involve back injuries. The focus of the training was body mechanics, appropriate lifting technique, and wellness.
- Six new employee safety orientations were conducted by RMTD through the Professional Development Center during this reporting period for an estimated 120 employees. These orientations are vital in preventing employee injury and are required by the Montana Safety Culture Act.
- RMTD and the State Compensation Insurance Fund performed an estimated 250 ergonomics assessments. In addition, training was provided for an estimated 500 employees. Cumulative trauma disorders are the occupational disease of the 90's and the assessments/training were intended to identify common cumulative trauma risk factors and to educate employees and supervisors about ways to prevent injury through correct body mechanics and workstation design.
- RMTD and numerous state agencies co-sponsored 'Safety Day.' This event was supported by the Governor and Cabinet and promoted by employers throughout the state. Informative indoor and outdoor exhibits featuring safety topics such as AIDS prevention, recreational safety, office safety, violence at work, and fire safety were prepared by state agencies and featured at the Capitol Rotunda. The State Fire Marshal's office sponsored a fire extinguisher relay race involving the Governor and cabinet. An estimated 800 state employees attended the day's festivities. The event obtained favorable statewide press and will increase awareness among employers and Montana's citizens that accidents don't just happen, they are caused and can be prevented.

- RMTD and the Professional Development Center sponsored a series of statewide seminars which focused on 'Violence at Work;' specifically, crisis intervention communication skills. Seminars were held in Missoula, Helena, and Billings for an estimated 150 employees. The division also participated in a Violence at Work Task Force that has developed model guidelines that address threat response and gun use for state agencies.

Loss Control Updates

During FY96, two bulletins were distributed to state agencies.

Bulletin (Volume 7, Number 1) was entitled 'Safety Expo 95' and provided information about the exhibits that were featured by state agencies, a summary of the governor's remarks, and timely tips for preventing employee injury.

A special pamphlet, 'Back Injury Prevention and Office Ergonomics,' focused on back injury prevention and ergonomics and included information on carpal tunnel syndrome, workstation design, body mechanics, lifting, and computer comfort.

These bulletins are intended to clarify division policy and procedure and to assist agencies in mitigating risk. The division feels that Risk Matters is an important tool in promoting a greater awareness and concern throughout the state for safety and risk management issues.

Internal Assessments/Inspections

Affiliated Factory Mutual/Allendale (AFM/Allendale), the state's commercial property insurance carrier, conducted detailed safety inspections of major state properties during FY96.

Qualified fire and safety engineers were sent to Montana to inspect major state property sites. The areas inspected were: 1) Capitol group, 2) State Compensation Insurance Fund, 3) Toston Dam,

4) Montana State Prison, 5) Montana State Hospital - Warm Springs, 6) Montana State Hospital - Galen, 7) Montana Developmental Center, 8) Department of Transportation, 9) MSU - Bozeman, 10) MSU - Billings, 11) MSU - Northern, 12) MSU College of Technology - Great Falls, 13) Montana Tech of the UM, 14) Western Montana College of the UM, 15) College of Technology - Missoula, 16) Helena College of Technology of UM, and 17) Division of Technology - Butte.

These engineers conducted a thorough inspection and analysis of fire protection equipment, alarm systems, water supply and demand, fire pumps, dry pipe valve pressure, roof covering and fire wall protection, exterior building exposure, building structure and collapse potential, and flood potential inspections. Emergency plans and self-inspection reports were also reviewed. Loss prevention and control were strongly emphasized. Written reports and recommendations were sent to RMTD and state agencies. Agencies have responded effectively to identified problem areas and have made sincere efforts to remedy identified deficiencies. AFM/Allendale also offered training seminars in disaster preparedness, equipment testing, boiler operation and maintenance, and fire protection.

Huntington T. Block, the state's fine arts carrier, conducted periodic inspections of major artwork and security systems. Recommendations were provided to assure protection of the state's valuable fine arts collections.

Mountain Air Insurance, the state's aviation carrier, conducted on-site inspections of state-owned aircraft and helicopters to assure proper identification and coverage. An inspection report of the premises and technical guidelines were provided to chief pilots. In addition, minimum qualifications for state and contract pilots were discussed and pilot histories were reviewed.

Finally, the Risk Management and Tort Defense Division expanded the inspection of state boilers by Hartford Steam Boiler to include an annual inspection of all insured state boilers to identify safety or maintenance concerns.

FINANCING RISK

As specified in §2-9-201, MCA, RMTD is responsible to administer a comprehensive state insurance plan. The division purchases commercial insurance where it is required by law or contract, the amount of potential loss is too large to retain, commercial insurance is available on acceptable terms, or insurance can economically provide ancillary services.

General liability and vehicle liability coverages are presently funded and self-insured because of the high costs of commercial insurance. It is estimated that the state saves \$2 to \$3 million a year by self-insuring. Self-insuring these risks also provides a greater degree of control over the outcome of many of the important lawsuits and claims which are brought against the State.

Commercial Insurance

During FY96, RMTD conducted a comprehensive evaluation and analysis of insurance coverages, limits, and deductibles to determine if they were cost-effective and comprehensive.

The analysis resulted in numerous modifications to the state's master commercial insurance bid including the addition of blanket business income interruption coverage, aggregate limits and higher deductibles, re-insurance consideration for state properties that require special consideration, and more limit options.

There were six lines of coverage placed in the State of Montana Master Bid during this cycle including:

- 1) Blanket Property
- 2) Boiler & Machinery
- 3) Fine Arts
- 4) Aircraft/Airport
- 5) Fidelity Bond
- 6) Commercial Trucks & Trailers

Cost savings were realized with aviation, employee fidelity bond, and specialty cargo truck insurance. Costs remained constant in all other lines of insurance

except commercial property which was adversely impacted by increases in replacement cost values and re-insurance costs for properties without fire/sprinkler protection.

The effective date of the new policies is July 1, 1997 to coincide with the beginning of the new fiscal year.

Commercial policies renew on an annual basis within the four year bid cycle.

Insurance costs are subject to the stability of the company, reinsurance markets, valuation of covered items, and the loss experience of the insured. Table 5 illustrates a cost comparison from FY94 to FY97.

TABLE 5							
SCHEDULE OF COMMERCIAL INSURANCE POLICIES							
	FY94	FY95	FY96	FY97	97 - 94 = (Cost Savings) Added Costs	97 - 95 = (Cost Savings) Added Costs	97 - 96 = (Cost Savings) Added Costs
PROPERTY INSURANCE	\$640,162	\$632,097	\$644,354	\$681,613	\$41,451	\$49,516	\$37,259
AIRCRAFT/AIRPORT INS.	40,484	39,082	39,650	38,323	(\$2,161)	(\$759)	(\$1,327)
HELICOPTER INSURANCE	64,604	60,194	74,571	73,230	\$8,626	\$13,036	(\$1,341)
FINE ARTS	41,181	37,775	37,775	37,775	(\$3,406)	\$0	\$0
BOILER INSURANCE	11,053	14,400	17,010	17,010	\$5,957	\$2,610	\$0
EMPLOYEE FIDELITY BOND	13,706	14,658	14,658	13,750	\$44	(\$908)	(\$908)
MISCELLANEOUS COVERAGE	15,302	16,801	12,866	7,721	(\$7,581)	(\$9,080)	(\$5,145)
TOTALS	\$826,492	\$815,007	\$840,884	\$869,422	\$42,930	\$54,415	\$28,538

Coverages and Costs

Property Insurance

AFM/Allendale was the successful bidder for the state property line. The property coverage includes the Toston dam business income and machinery breakdown, as well as business interruption at the universities.

Under the policy, all-risk coverage is provided for state buildings and contents to replacement value. The deductible remains at \$150,000 per occurrence, except for the Montana State Prison, which now has a deductible of \$250,000 per occurrence. Earthquake coverage is provided to \$100 million with a \$100 million annual aggregate and a \$1 million per occurrence deductible. Flood is covered to \$100 million with a \$100 million annual aggregate and a \$500,000 per occurrence deductible. Extra expense is covered to \$2 million.

During this bid cycle, the division was successful in negotiating blanket business interruption coverage for all state agencies to \$1.3 billion per occurrence. This coverage is intended to protect 'revenue/income streams' in the event of catastrophic loss to state properties. State owned and leased/loaned vehicles parked on state premises were also included as covered property subject to the provisions of the overlying coverage.

The coverages provided by Factory Mutual are among the best in the industry. Standard industry forms typically do not cover the following:

- Costs of excavation, grading, backfilling, or filling.
- Foundations of buildings, structures, machinery, or boilers below the basement or ground surface.

- Personal property while airborne or waterborne.
- Retaining walls.
- Underground pipes, flues, or drains.
- Costs to restore valuable papers and records.
- Fences, radios, or television antennas (satellite dishes).
- Signs - attached or detached.

As Table 5 indicates, through the bid process property insurance will increase slightly over FY96 premium. This increase is attributable to increases in replacement cost values, and additional re-insurance costs for properties without fire/sprinkler protection.

Aviation (Fixed Wing/Helicopter and Airport) Insurance

The bid for aviation coverage was very competitive this fiscal year. Indemnity Insurance Company of North America was the successful bidder for the airport coverage. Ranger Insurance Company was awarded the bid for aircraft and rotorcraft. The local servicing agent for both airport and aircraft/rotorcraft lines is H.H. Stanley Aviation of Great Falls, Montana.

Under both policies, coverage is provided for liability to the statutory limit of \$1.5 million per occurrence as per §2-9-108, MCA. Hull coverage under the aircraft/rotorcraft policy is included to stated value with deductibles of \$3,000 in-motion and \$500 not-in-motion for most aircraft.

Airport coverage remains virtually unchanged since the coverage was placed with the incumbent carrier (Ranger Insurance Co. through H.H. Stanley Co. of Great Falls, Montana). The number of aircraft and airports covered remains unchanged.

Table 5 shows that airport coverage costs declined slightly. Stabilization in the European reinsurance markets and increased underwriting capacity have

resulted in a 'softer' market for this line of coverage than during the last bid cycle.

Fine Arts

A large portion of the State's fine arts collection is either on display or in storage at the Montana Historical Society in Helena. Other major locations with fine arts risk include the Museum of the Rockies and larger colleges and universities. The successful bidder this fiscal year was the incumbent carrier, Huntington T. Block (Washington, D.C.).

Costs of this insurance in FY97 remain unchanged over previous years. Statewide coverage is now provided with better protection at a lower rate. Agencies are no longer required to schedule fine arts values since the new policy provides coverage to \$44 million per occurrence for all Historical Society fine arts, and \$18 million per occurrence for fine arts at all other locations.

Coverage is provided for all paintings, etchings, drawings, statuary, objects of rare historical value, and memoirs. In the event of a loss, items are replaced to market value as agreeable to the state and the company and as established by competent adjusters. International display and exhibition coverage is provided to \$1 million.

Items on loan to the state are covered for legal liability in accordance with loan agreements. Fine art in transit is covered to \$5 million on any one conveyance in the U.S. and Canada. Because of a favorable loss history, RMTD selected a \$100,000 per occurrence deductible for fine arts. All agencies purchasing independent coverage were advised of the statewide coverage and realized cost savings by not renewing such insurance.

Boiler

Hartford Steam Boiler was again the successful bidder for the state's boiler & machinery insurance. Coverage is provided for 'all risks of loss' to \$10 million per occurrence with a \$100,000 deductible. State agencies assume the first \$1,000 of the deductible. The policy includes \$500,000 of extra expense

protection including the removal of hazardous materials (such as asbestos).

In FY94, the premium was \$11,053 which was an \$8,947 cost saving or a 45% decrease from the prior year. This savings was primarily due to raising the deductible to \$100,000. However, the carrier found the need to conduct statewide inspections of the state's boilers. They found that the premium did not even cover the cost of minimum inspections. Consequently, premiums increased in FY95 to \$14,400 and to \$17,010 by the beginning of FY97. The FY96 premium is still \$2,990 less than the FY93 premium.

Employee Fidelity Bond

The Travelers/Aetna Company was awarded the bid for employee fidelity bond coverage. The coverage has been increased from \$1 million to \$2 million for all state employees protected under the Tort Claims Act. Members of Boards and Commissions are also covered under the new fidelity bond. The new coverage also includes protection for faithful performance which was not previously covered. There is a \$10,000 per occurrence deductible on this bond. State agencies assume the first \$1,000 of this deductible.

Miscellaneous Coverage

Department of Public Health and Human Services (DPHHS) long haul semi-trucks are covered under miscellaneous insurance. These trucks are used to deliver food commodities throughout the state and require insurance protection. A change in the rate of insurance reduced the cost from \$10,720 in FY95 to \$7,721 in FY97 with the new bid.

Numerous inland marine, crime, and unique specialty policies that existed in FY93 are now retained by the division. Few specialty policies are purchased for state agencies. Additional information on specific coverages provided by commercial insurance is available in the Risk Management Procedures Manual, Section V.

Losses - Commercial Insurance

RMTD received \$88,453 in insurance proceeds during FY96. These proceeds were received for the following losses:

Fidelity Bond Claim	\$18,949
Fine Arts Claim	\$64,777
Property Claim	<u>\$ 4,727</u>
Total	\$88,453

The fidelity bond claim was paid early in FY96. The amount of the entire claim was \$18,949. The policy has a \$10,000 deductible. The commercial insurance company paid \$18,949; the self-insurance fund paid \$9,000 and the Department of Revenue paid \$1,000. The individual whose actions resulted in this claim was ordered to pay restitution to the state and paid back approximately \$2,000 during the year. The restitution payments are applied first to the commercial carrier, then the self-insurance fund, with the remainder to the Department of Revenue.

The fine arts claim was the result of damage during transportation to and from an exhibit. As the art was loaned to the state for exhibition by a third party, there was no deductible for the loss and the commercial carrier paid the total amount. The amount paid is based on the market value of the art at the time of the loss. The market value is determined by an experienced fine arts claims adjuster.

The amount shown for the property claim includes FEMA proceeds for the clean-up of flood damage to the roof of the Helena Department of Transportation building. The damage occurred on February 6, 1996. There had been heavy snows, then a warming trend. The roof is flat with a drainage system, however, the drainage system backed up with water due to an ice clog in the drain pipe beneath the ground. FEMA paid 75% of the cost to clean up the water damage. The roof will have to be replaced during FY97.

Self-Insurance Fund

Appendix III provides a summary of the self-insurance fund from FY92 through FY96. Ending fund balances are provided for each of these fiscal years. Primary sources of revenue are the premiums charged to state agencies for insurance coverage and interest earnings on the fund. Expenditures include claims paid, operational costs, and commercial insurance purchases.

The remainder of this section discusses legal judgements and settlements that have adversely affected the fund. The position of the fund is positively impacted by charging an adequate premium to agencies for services provided as well as continued legal success.

If the division wins 100% of its cases, the fund balance still declines because of legal defense and related costs. However, aggressive defense is far more cost effective than simply paying every claim or suit filed against the state. RMTD has won most of its cases brought to trial in the past two years. Any loss settlements and associated costs adversely effect the fund balance in spite of a preponderance of legal success.

Despite an increase in the number of suits defended, the fund balance has increased almost \$2 million since FY94. In FY92, the fund balance decreased to \$4.4 million. The most significant of losses contributing to this decline in the fund balance were:

- 1) Lewis v. the State, \$500,000
- 2) Howell v. the State, \$360,000
- 3) S. Doe v. the State, \$200,000

In FY94, the fund balance increased from \$4.09 million at the beginning of the year to \$5.4 million by fiscal year end. This significant increase is primarily attributable to less than expected losses in general liability and increases in proprietary rates.

In FY96, the fund balance increased from a beginning level of \$6.5 million to \$7.3 million by fiscal year

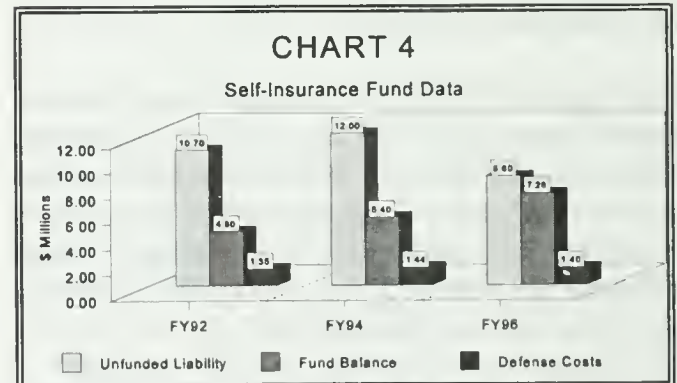
end. This increase is primarily attributable to an increase in state agency proprietary rates and better than expected loss experience.

Actuary Report

During FY96, Tillinghast of Denver, Colorado conducted an actuarial analysis of the self-insurance fund. The scope of the actuarial analysis included the following elements:

- 1) A financial analysis of the fund.
- 2) Determination of an overall premium for each line of insurance self-insured by the state.
- 3) Development of an equitable and fair methodology for allocating insurance premiums to state agencies.

At the end of this fiscal year, the state's unfunded liability is estimated to be \$8,612,344 as compared with \$38 million in FY86. The state's unfunded liability has decreased \$3.4 million since FY94. The decrease is attributable to an increase in insurance premiums charged to state agencies since FY92 and success in defending claims and lawsuits.



During this reporting period, the division had approximately 230 lawsuits pending and resolved 48 of these. Chart 4 shows unfunded liability, fund balance, and legal defense costs for fiscal years 1992, 1994, and 1996.

RISK MANAGEMENT MILESTONES

A number of risk management milestones were achieved during FY96 and are noted below:

- The State of Montana completed its first full year of defensive driving training. To date, an estimated 1,200 state employees have received this training.
- University system property appraisals in Missoula were completed during FY96. These appraisals were very important in identifying overstated values at a number of key facilities, and resulted in an overall decline in appraised values.
- The state master bid for all commercial insurance coverages was let resulting in increased limits and better coverages than ever before.

APPENDIX I

Summary of Legal Fees 07/01/95 - 06/30/96

LAW FIRM	LOCATION	# CASES DEFENDED	% CASES DEFENDED	LEGAL FEES
ALS	Helena	106	26.9%	\$276,688
ALS/Boone/Brown'g/Corr	Helena	1	0.3%	
ALS/Corr/Keller	Helena	1	0.3%	
ALS/Corr/Keller/RMTD	Helena/G.F.	1	0.3%	
Administration	Helena	1	0.3%	
ALS/Keller	Helena	2	0.5%	
Fish, Wildlife & Parks	Helena	1	0.3%	
ALS/Murphy	Helena/Kal.	1	0.3%	
ALS/RMTD	Helena	1	0.3%	
Attorney General	Helena	4	1.0%	
Blkft Legal	Browning	1	0.3%	
Boone, Karlb	Missoula	3	0.8%	\$185,173
Boone/Browning	Helena/Msla	1	0.3%	
Boone/U-System	Missoula	1	0.3%	
Brown etc.	Billings	3	0.8%	\$11,341
Brown/Luxan	Billings/Helena	1	0.3%	
Browning Kaleczyc *	Helena	3	0.8%	\$150,132
Buxbaum, etc.	Butte	1	0.3%	\$6,735
Carey/RMTD	Helena	1	0.3%	
Chronister, etc.	Helena	1	0.3%	
Comm. Higher Education	Helena	3	0.8%	
Corrections	Helena	103	26.1%	
Cure, Davis, etc.	Gt. Falls	10	2.5%	\$109,009
Environmental Quality	Helena	1	0.3%	
Garlington, etc.	Missoula	8	2.0%	\$50,599
Harrington, James	Butte	3	0.8%	\$46,392
Hughes, etc.	Helena	2	0.5%	\$2,502
Hughes/RMTD	Helena	1	0.3%	
James	Gt. Falls	1	0.3%	\$3,605
Keller, etc.	Helena	6	1.5%	\$81,556
Labor & Industry	Helena	1	0.3%	
Luxan	Helena	1	0.3%	\$95
Military Affairs	Helena	1	0.3%	
Moulton, etc.	Billings	8	2.0%	\$89,127
Murphy, etc.	Kalispell	5	1.3%	\$40,499
O.P.I.	Helena	1	0.3%	
Public Health	Helena	2	0.5%	
Quane **	Missoula	1	0.3%	
RMTD	Helena	94	23.9%	
RMTD/Ugrin	Helena	1	0.3%	
Transportation	Helena	3	0.8%	
Ugrin, etc.	Gt. Falls	2	0.5%	\$11,066
Williams	Missoula	1	0.3%	\$10,001
TOTALS		394	100.0%	\$1,074,520

* Includes defense of approximately 50 suits from FY92 prison disturbance.

** Defense of lawsuit tendered to contractor's insurance company.

APPENDIX II

Closed Lawsuits FY96

AGENCY	CLAIMANT	AMOUNT SOUGHT	AMOUNT PAID	LOSS ADJ EXPENSE	HOW RESOLVED
CR	Berwald, Robert W.	44,000	6,250	22,238	Dismissed upon settlement
TR/JU/ag	Birkholz, Alvin				State's Motion to Dismiss granted
PH	Blackburn, Amy			788	Plaintiff's Motion to Dismiss granted
US/msu	Boeder/Clevenger	1,500,000		185,814	Jury trial - Judgment for defendants
PH/fs	Brewer, David & Denise	42,000	2,500		Dismissed upon settlement
CR/bp	Brown, Anthel/Arlodge	40,000			State's Motion to Dismiss granted
CR/msp	Burk, Jack/*LANGFORD	1,000,000	1,362	1,657	Jury trial - Judgment for plaintiff
MA	Carney, James L.				State's Motion to Dismiss granted
US/msu	Clevenger/*BOEDER			878	Consolidated with Boeder
CR/msp	Collins, Daniel/*LANGFORD	40,000			Dismissed with prejudice
CR/msp	Dahl, Thomas/*LANGFORD	340,000			Ninth Circuit appeal dismissed
EQ	Fuchs, Clinton (estate of)	750,000		44,256	Motion for Reconsideration denied
CR/msp	Godfrey, James/*LANGFORD	88,000			State's Summary Judgment granted
CR/msp	Gorder, Paul/*LANGFORD	500,000			Dismissed with prejudice.
CR/msp	Gray, William				State's Motion to Dismiss granted
TR	Great West Casualty	7,793		5,560	Voluntary dismissal by plaintiff
TR/bt	Griner, Mary	30,000	7,772	862	Dismissed upon settlement
CR/msp	Hage, Tina	20,000			Voluntary dismissal by plaintiff
JU	Hesson, Marsh	12,000		833	Plaintiff's Motion to Dismiss granted
CR/msp	King, William			105	Ninth Circuit appeal dismissed
CR/msp	Klooz, Thomas/*LANGFORD	500,000		532	Plaintiff's Motion to Dismiss granted
US/um	Kowalski, Larry	86,815	17,095	4,403	Dismissed upon settlement
PI	K.F.				State's Summary Judgment granted
CR/bp	Lafley, Charles/*LANGFORD				State's Motion to Dismiss granted
CR/msp	Laird, Kenneth/*LANGFORD				Dismissed by stipulation
PH	Linder, Ronald & Nani	1,036,000	100,000	44,998	Dismissed upon settlement
TR	Marlow, Kenneth A.	212,100	(a)	24	Dismissed by stipulation
CR/msp	Mason, Daniel/*LANGFORD	150,000		110	State's Motion to Dismiss granted
CR	McAdam, Toby			1,438	State's Motion to Dismiss granted
CR/msp	Miller, Kenneth/*LANGFORD	100,000			State's Summary Judgment granted
US/um	Mitchell, Sandy	25,000	16,500	1,530	Dismissed upon settlement
US/um	Moffatt, Lori	9,500	5,700	6,987	Dismissed upon settlement
TR/kl	Munro, Debra	250,000	25,000	44,447	Dismissed upon settlement
CR/bp	Murphy, Kevin T.				State's Summary Judgment granted
AD/sf	Neils, Ralph			278	Plaintiff's Motion to Dismiss granted
CR/msp	Peppinger, Michael/*LANGFORD				Plaintiff's Motion to Dismiss granted
AD/sf	Rooney, Scot	752,695	18,500	129,827	Dismissed upon settlement
CR/msp	Rudolph, Randall	750,000		1,049	State's Motion to Dismiss granted
TR/hv	Salois, Michael			10,859	Dismissed by stipulation
CR/msp	Thompson, Jim/*LANGFORD	750,000			Dismissed with prejudice
US/msu	Torres, Ana Maria			37,929	Supreme Court affirmed State's Summary Judgment
RE	Wadsworth, Shannon	88,000	85,000	58,012	Supreme Court affirmed jury trial plaintiff's judgment
CR/msp	Walker, Jerry				State's Motion to Dismiss granted
US/um	Weinstein, Martin E.	750,000	114,386	230,872	Jury Trial - Judgment for plaintiff
TR	Wiley, Ron C/Audrey			53,215	Supreme Court affirmed State's Summary Judgment
RE	Wishman, April & Ray	1,500,000		4,071	Ninth Circuit affirmed dismissal
TOTALS *		12,873,903	1,900,065	922,553	

Agency abbreviations defined in Appendix III. Some lawsuits did not specify damages sought. * Column totals include amounts from court sealed records. (a) Defense of lawsuit tendered to contractor's insurance company.

APPENDIX III

SELF-INSURANCE FUND ACTIVITY

Fiscal Years 1992 through 1996

	FY92	FY93	FY94	FY95	FY96
Prior Year Ending Balance	\$4,586,481	\$4,440,486	\$4,093,359	\$5,439,916	\$6,466,407
Prior Year Adjustments	\$540,530	\$21,001	\$15,978	\$188,377	(\$72,884)
Adjusted Beginning Balance	\$5,127,011	\$4,461,487	\$4,109,337	\$5,628,293	\$6,393,523
Revenues:					
General Liability/Vehicle Premiums	\$3,461,860	\$3,324,170	\$3,599,972	\$4,635,622	\$4,603,513
Pass-Through Premiums	\$630,456	\$710,388	\$741,316	\$756,498	\$1,008,959
Deductible Reserve Premiums	\$207,410	\$208,962	\$380,000	\$380,000	\$340,000
Subtotal: Premiums Charged	\$4,299,726	\$4,243,520	\$4,721,288	\$5,772,120	\$5,952,472
Investment Earnings	\$119,272	\$319,158	\$310,597	\$483,385	\$501,677
Insurance Proceeds	\$294,946	\$79,392	\$522,228	\$69,547	\$88,454
Non-Budgeted Revenues	\$24,053	\$96,058	\$300,067	\$4,321	\$19,112
Total Revenues	\$4,737,997	\$4,738,128	\$5,854,180	\$6,329,373	\$6,561,715
Expenditures:					
General Liability/Vehicle	\$2,200,866	\$2,208,776	\$901,347	\$1,881,106	\$2,599,626
Property Deductible	\$246,495	\$263,313	\$233,156	\$241,531	\$128,102
Commercially Covered Losses	\$522,232	\$106,865	\$522,228	\$69,547	\$88,454
Subtotal: Statutory Authority	\$2,969,593	\$2,578,954	\$1,656,731	\$2,192,184	\$2,816,182
Loss Adjustment Expense	\$1,442,699	\$1,309,529	\$1,525,337	\$1,986,402	\$1,440,951
Operations	\$365,574	\$494,004	\$519,408	\$495,438	\$569,873
Pass-Through Premiums	\$630,456	\$710,388	\$826,492	\$814,231	\$841,936
Non-Budgeted Expenses & Offsets	\$16,200	\$13,382	(\$4,367)	\$3,004	\$25,813
Subtotal: Legislative Authority	\$2,454,929	\$2,527,303	\$2,866,870	\$3,299,075	\$2,878,573
Total Expenditures	\$5,424,522	\$5,106,257	\$4,523,601	\$5,491,259	\$5,694,755
Ending Balance	\$4,440,486	\$4,093,359	\$5,439,916	\$6,466,407	\$7,260,483
Annual Increase (Decrease)	(\$686,525)	(\$368,128)	\$1,330,579	\$838,114	\$866,960

APPENDIX IV

Agency Abbreviations

Description of Agency Abbreviations		Code	Description of Agency Abbreviations		Code
AC	Montana Arts Council		PI	Office of Public Instruction	3501
AD	Department of Administration	6101	PS	Public Service Commission	4201
AG	Department of Agriculture	6201	RE	Department of Revenue	5801
AU	Auditor's Office	3401	SC	Judiciary	2110
BE	State Board of Education	5101	SL	State Library	5115
BE/sdb	School for the Deaf & Blind	5113	SS	Secretary of State	3201
CO	Department of Commerce	6501	TR	Department of Transportation	5401
CP	Commissioner of Political Practices		TR/bl	Billings	
CR	Department of Corrections	3202	TR/bu	Butte	
CR/bp	Board of Pardons	6401	TR/bz	Bozeman	
CR/msp	State Prison	6413	TR/gf	Great Falls	
CR/ph	Pine Hills School	6409	TR/gl	Glendive	
CR/sr	Swan River Forest Camp	6410	TR/hv	Havre	
CR/wcc	Women's Correctional Center		TR/kl	Kalispell	
EQ	Department of Environmental Quality	5301	TR/lw	Lewistown	
FW	Department of Fish, Wildlife & Parks	5201	TR/mc	Miles City	
GO	Governor's Office	3101	TR/ms	Missoula	
HS	Historical Society	5117	TR/wp	Wolf Point	
JU	Department of Justice	4110	US	University System	
LE	Legislative Branch		US/buv	Mt. Tech, Division of Technology (Butte)	3512
LI	Department of Labor & Industry	6602	US/bvt	College of Technology - Billings	3511
LV	Department of Livestock	5603	US/emc	Montana State University - Billings	5106
MA	Department of Military Affairs	6701	US/gfv	MSU College of Technology - Gt. Falls	3513
NR	Department of Natural Resources	5706	US/hvt	Helena College of Technology	3514
PH	Department of Public Health & Human Services	6901	US/msu	Montana State University - Bozeman	5104
PH/mdc	Developmental Center		US/mt	Montana Tech of The Univ. of Montana	5105
PH/msh	State Hospital		US/mvt	College of Technology - Missoula	3515
PH/vhc	Veterans' Home, Columbia Falls		US/nmc	Montana State University - Northern	5107
PH/vhg	Veterans' Home, Glendive		US/um	The University of Montana - Missoula	5103
PH/emt	Eastmont Human Service Center		US/wmc	Western Montana College of The U of M	5108



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